IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.1336 OF 2004

IN

SUIT NO.1165 OF 2004

...

Dharti Dredging and Construction Ltd. ...Plaintiff

v/s.

AFCONS Infrastructure Ltd. ...Defendant

...

Mr.Vishal Sheth with Mr.R.A. Fernandes for the Plaintiff.

Mr.H.Toor i/b Crawford Bayley & Co. for the Defendant.

...

**CORAM: D.K.DESHMUKH, J.**

**DATED:** 31ST MARCH,2005

**P.C.:**

1. This Notice of Motion is taken out by the Plaintiff under Order 12 Rule 6 of the Civil Procedure Code for passing a decree against the Defendant in the amount of Rs.29,35,248/-. The Plaintiff has filed this suit for recovery of Rs.99,40,299.45.

2. This Notice of Motion has been taken out by the Plaintiff because according to the Plaintiff by letter dated 11-6-2002 at Exh.A to the Notice of Motion the Defendant has admitted his liability to pay an amount of Rs.35,35,248/-. Out of which the amount of Rs.6 lakh was paid by the Defendant on 29th August, 2002 and therefore an amount of Rs.29,35,248/- is admittedly due from the Defendant to the Plaintiff and therefore the Plaintiff claims a decree under Order 12 Rule 6 of CPC in the amount of

Rs.29,35,248/-. The learned Counsel appearing for the Plaintiff relies on the judgment of the Division Bench of this Court in the case of Madhavrav Ganeshpant Oze v/s. Gulabbhai Lallubhai and another, 1998, The Indian Law Reports, (vol.XXIII) 177, the judgment of Oudh High Court in the case of Lucknow Improvement Trust v/s. P.L.Jaitly & Co., AIR 1930 Oudh, 105, the judgment of Hydrabad High Court in the case of Commercial Enterprisers v/s. Madan Mohan Singh, AIR (38) 1951 Hyderabad 47.

3. The learned Counsel appearing for the Defendant, on the other hand, submits that the letter dated 11-6-2002, which is relied on by the Plaintiff was written without prejudice to the rights and contentions of the Defendant and therefore, on the basis of that letter, decree on admission cannot be passed. He relies on the judgment of the Privy Council in the case of Walker v/s Wilsher, 1889 Queen's Bench Division, 335, a judgment of the Supreme Court in the case of Nagubai Ammal and ors, v/s. B.Shama Rao & ors, 1956 S.C. 593, a judgment of the Delhi High Court in the case of Parivar Seva Sansthan v/s Dr.(Mrs.) Veena Kalra and ors, AIR 2000 Delhi 349, and the judgment of the Jammu and Kashmir

High Court in the case of Union of India v/s. M/s.Feroze and Co., AIR 1962 Jammu and Kashmir, 66.

4. The Plaintiff has taken out this Notice of Motion for decree of admission under Order 12 Rule 6 of C.P.C. Order 12 Rule 6 of C.P.C. reads as under:

> Judgment on admissions- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

5. Perusal of the above rule shows that if the court finds that the facts that constitute liability have been admitted by the Defendant either in the

pleadings or otherwise, the Court can pass a decree against the Defendant. The Supreme Court has considered the provisions of Rule 6 Order 12 of the CPC in its judgment in the case of Balraj Taneja and another v/s. Sunil Madan and another, AIR 1999 SC , 3381 and observed thus in paragraphs 22 to 27:

> 22. This rule was substituted in place of the old rule by the Code of Civil Procedure (Amendment) Act, 1976. The objects and Reasons for this amendment are given below:
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> "Under Rule 6, where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the rule is to enable a party to obtain a speedy judgment at least to the extent of the relief to which, according to the admission of the defendant, the plaintiff is entitled. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also covered by the rule."

23. Under this rule, the court can, at an interlocutory stage of the proceedings, pass a judgment on the basis of admissions made by the defendant. But before the court can act upon the admissions, it has to be shown that the admission is unequivocal, clear and positive. This rule empowers the court to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit.

24. In Razia Begum v. Sahebzadi Anwar begum, it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the court may still require the plaintiff to prove the facts pleaded by him in the plaint.

25. Thus, in spite of admission of a fact having been made by a party to the suit, the court may still require the plaintiff

to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under:-

"58. Facts admitted need not be proved.- No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

26. The proviso to this section specifically gives a discretion to the court to require the facts admitted to be proved otherwise than by such admission.

The proviso corresponds to the proviso to Rule 5(1) Order 8 CPC.

27. In view of the above, it is clear that the court, at no stage, can act blindly or mechanically. While enabling the court to pronounce judgment in a situation where no written statement is filed by the defendant, the court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the court can either pronounce judgment against the defendant or pass such order as it may think fit.

6. It is clear from the judgment of the Supreme Court quoted above that in order that the court can pass a decree under Order 12 Rule 6 on the basis of admission, the admission should be unequivocal, clear and positive. The Supreme Court has considered this aspect of the matter regarding conclusive admission in its judgment in the case of Nagubai Ammal and ors, v/s. B.Shama Rao & ors.,

1956 SC 593. In paragraph 18, the Supreme Court has observed thus:

> "An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel."

7. It is, thus, clear that according to the Supreme Court an admission can be explained by the party. In so far as the present case is concerned, only looking at the document namely the letter dt.11-6-2002, it would not be possible for the court to pass a decree, because the letter on the face of it shows that it has been written by the Defendant without prejudice to its rights and contention. Therefore, before treating that letter as

unequivocal admission of liability by the Defendant, an opportunity will have to be given to the Defendant to explain in what circumstances the letter was written. Similarly, before claiming a decree on the basis of that letter the Plaintiff will have to explain that why the Defendant mentions in the letter that he is writing that letter without prejudice.

8. In these circumstances, therefore, as the letter dated 11-6-2002 without any further explanation by itself cannot be taken as a conclusive admission of liability by the Defendant, a decree under Order 12 Rule 6 cannot be passed on the basis of that letter. Notice of Motion is, therefore, disposed of.

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